



Comptroller General
of the United States
Washington, D.C. 20548

144970

Decision

Matter of: Telephone Sales and Communications Company
File: B-245955
Date: October 9, 1991

Ayam Mani for the protester.
Catherine M. Evans, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly applied 12 percent Buy American Act evaluation factor to protester's bid is dismissed where, although the protester allegedly intended to provide domestic products, its bid clearly indicated that all end items being provided were produced in countries other than the United States.

DECISION

Telephone Sales and Communications Company (TSC) protests the award of a contract to BTS under invitation for bids (IFB) No. R6-3-91-70S, issued by the Department of Agriculture, Forest Service for a telephone system. TSC alleges that the agency improperly displaced TSC as the low bidder by applying a 12 percent Buy American Act evaluation factor to its bid. TSC also alleges that the awardee's bid should have been rejected as nonresponsive because it did not contain a completed Buy American Act certificate.

We dismiss the protest.

The IFB contained the standard Buy American Certificate, set forth at Federal Acquisition Regulation (FAR) § 52.225-1, which reads as follows:

"The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act--Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States."

"Excluded End Products

Country of Origin

Under "excluded end products," TSC entered "all;" under "country of origin," it entered "varied." Since TSC's certificate thus indicated that all of its offered end products were produced in countries other than the United States, the agency added the 12 percent evaluation factor prescribed in FAR § 25.105(a)(2) to TSC's total bid price. The addition of the 12 percent factor to TSC's bid raised its price slightly above that of the next low bidder, BTS, which had not listed any nondomestic end products in its certificate.

TSC alleges that the agency's application of the 12 percent Buy American evaluation factor was improper. First, TSC contends that the certificate required bidders to list the component parts, rather than the end products, manufactured outside the United States. TSC explains that while its offered telephone system is a domestic product, some components within the system are manufactured in other countries, and it therefore inserted the word "varied" to describe the countries of origin for those components. TSC asserts that the agency mistakenly concluded that its offered end product was produced in various countries. Next, TSC alleges that the agency improperly penalized TSC by 12 percent of the total bid price instead of 12 percent of the price of the end products found to be other than domestic.

Both of TSC's arguments are without merit. Since the language of the Buy American Certificate clearly requires the bidder to list end products that are not domestic end products as defined by the FAR, TSC's insertion of the word "all" in the space provided, along with "varied" to identify the countries of origin, reasonably indicated to the agency that all of TSC's offered end products were produced in various countries outside the United States. Accordingly, we believe the agency properly applied the prescribed 12 percent evaluation factor to TSC's bid. Furthermore, FAR § 25.105(b) provides that the factor "shall be applied on an item by item basis or to any group of items on which award may be made, as specifically provided in the solicitation." Here, award was made based on a total price for six items. Since TSC's bid indicated that all of its offered items were nondomestic end products, the contracting officer properly applied the FAR evaluation instructions by adding the evaluation factor to TSC's price for all six items.

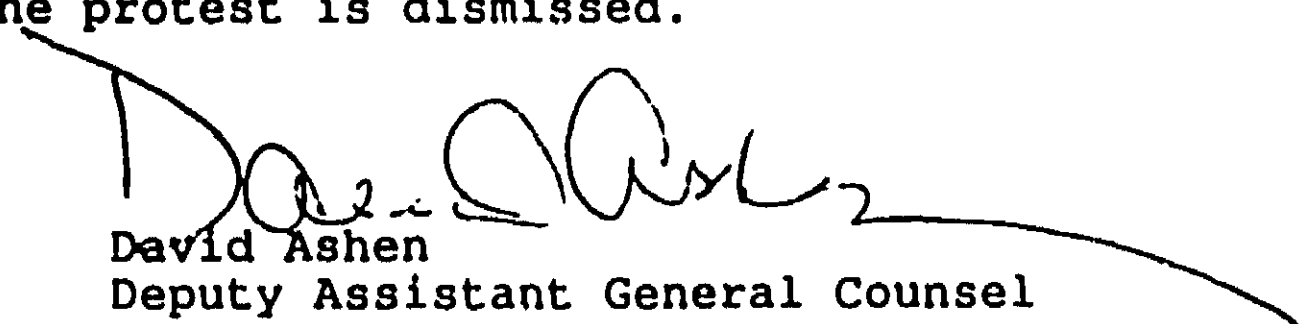
TSC also alleges that BTS's bid should have been rejected as nonresponsive because BTS did not fill in the Buy American Certificate in its bid. In this regard, TSC states that it requested oral advice from agency officials as to proper completion of the bid forms, and was told that any item left blank would result in "automatic disqualification of the bidder." TSC concludes that BTS's bid should have been rejected for that reason.

A responsive bid is one that offers to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with all the invitation's material terms and conditions. Bender Shipbuilding & Repair Co., Inc., B-219629.2, Oct. 25, 1985, 85-2 CPD ¶ 462. Where, as here, a bidder excludes no end products from the Buy American Certificate in its bid and does not indicate that it is offering anything other than domestic end products, the agency's acceptance of the bid results in an obligation on the part of the bidder to furnish domestic end products. Id. Thus, the fact that the awardee did not fill in the certificate did not provide a basis for the agency to reject its bid.

TSC appears to be arguing that it was unfairly penalized for making a good-faith attempt to follow the agency's instructions by filling in all of the blanks in the bid forms, including the Buy American Certificate, while the awardee, which did not comply with the instructions, was rewarded. In our view, the agency's general advice to complete the required certifications and representations in no way explains TSC's unreasonable interpretation of the Buy American Certificate, that is, that a clause requesting bidders to identify "excluded end products" in fact requested identification of excluded components. TSC's displacement as low bidder resulted from its own misinterpretation of the clear, express language in the Buy American Certificate and not on any erroneous agency advice.

We find that TSC has failed to state a valid basis for protest.

The protest is dismissed.


David Ashen
Deputy Assistant General Counsel